IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6058 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JANTA BAZAR KHADI GRAM UDYOG SARVAJANIK TRUST

Versus

MEDICAL SUPERINTENDENT

Appearance:

1. Special Civil Application No. 6058 of 2005

MS DISHA NANAVATI FOR NANAVATY ADVOCATES for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1-2,3

MR DIPEN DESAI ASST GOVERNMENT PLEADER for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 10/05/2005

ORAL JUDGEMENT

Rule. Shri Dipen Desai, the learned AGP waives service of Rule on behalf of the respondents.

With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

.RS 2.

#. In this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, direction or order directing the respondents to renew the licence to run the medical store situated at Irvin General Hospital, Jamnagar.

It is the case of the petitioner that the petitioner was granted licence to run medical store at Irvin General Hospital, Jamnagar by order dated 22.1.1993 for a period of one year. The said licence was renewed for a further period of twelve months by order dated 28.4.1994 and then the said licence was in force upto 1.2.1995 and thereafter there is no renewal of the licence. It is the case of the petitioner that at the end of the year 1994 on 24.12.1994, they had applied for further renewal of the licence for the year 1995 but no decision was taken and the licence was not renewed thereafter. It is the case of the petitioners that after 1994 they have made various representations and the applications to the respondents for renewal of the said licence on various dates. It is the case of the petitioner that even the Medical Superintendent, Irvin General Hospital, Jamnagar also recommended case of the petitioner to be respondent No.2 with regard to renewal of licence of the present petitioner on 16.1.1997 but the same has also not been considered by the respondent No.2 - Additional Director, Health and Medical Education Department, Gandhinagar. It appears that on the basis of the instructions of the respondent No.2 - Additional Director, the Medical Superintendent, Irvin General Hospital, Jamnagar had undertaken steps to evict the present petitioner from the said premises and by notice dated 24.3.2005 they were served with the notice and they were required to vacate the medical store situated at Irvin Hospital, Jamnagar within seven days and therefore, the petitioner has preferred the present Special Civil Application for an appropriate writ, direction or order directing the respondents to renew the licence to run the medical store situated at Irvin General Hospital, Jamnagar.

#. Mrs.Disha Shelat, the learned advocate appearing for M/s Nanavati Advocates for petitioner has submitted that inspite of the recommendations by the Medical Superintendent dated 16.1.1997, licence granted in favour of the petitioner is not renewed. It is also further

submitted that in the notice dated 24.3.2005, no specific ground or no specific reason has been mentioned with regard to breach of conditions or any other misconduct on the part of the present petitioners. It is also submitted that the respondents have made ground of non renewal of licence and therefore, it is requested to direct the respondents to renew the licence. It is also further submitted that the petitioners have time and again made various representations to renew licence but no decision has been taken and therefore, the petitioners should not be penalised and non renewal of the licence should not be basis for an action directing the petitioners to vacate from the medical store. It is also further submitted that as such, the respondents are required to follow the provisions of Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, which is not followed and therefore, it is requested to allow the present special civil application.

#. On advance copy being served, Shri Dipen Desai, the learned AGP appears on behalf of the respondents. Affidavit-in-reply is also filed on behalf of the respondents. It is submitted that the present special civil application is also required to be dismissed on the ground of delay and latches as the licence granted in favour of the petitioner had expired long back in the year 1994 and thereafter, the same has never been renewed and therefore, the present petition preferred after a period of eleven years seeking issuance of writ, order or direction to renew the said licence, is not required to be entertained on the ground of delay itself. It is also submitted that licence has not been renewed since 1994 and more particularly from 1995 and therefore, the petitioner was in illegal occupation of the premises in question and therefore, the petitioner is unauthorised occupant. It is also submitted that the petitioner is served with the eviction notice dated 24.3.2005 which has not been challenged by the petitioners. It is also further submitted that said notice dated 24.3.2005 is issued in view of the policy decision taken by the State Government dated 22.3.2005 and as per the said circular, all the Deans, Medical Superintendents and the Directors are instructed not to renew any licence for medical stores, STD PCO, Canteen etc. which have expired and the licence holder shall be immediately evicted. It is also further submitted that the said decision was taken in view of the fact that in new Civil Hospital Compound, a medical store was auctioned by way of public auction which fetched premium of Rs.1.61 crores for a contract of three years and taking into account the above referred aspect, it has been decided by the State Government that

henceforth all the public premises shall be awarded by way of public auction so that maximum amount can be fetched and the Government can earn maximum revenue out of the such proceeds. It is therefore submitted that in view of the above referred policy decision, notice dated 24.3.2005 has been issued and the petitioner is directed to hand over peaceful and vacant possession of the premises in question, is absolutely just and proper.

#. Affidavit-in-rejoinder is also filed on behalf of the petitioners interalia contending that the action of the respondents is in breach of the provisions of the Gujarat Public Premises (Eviction of Unauthorised) Occupants Act, 1971 and before directing the petitioners to evict from the medical store, it is mandatory to issue show cause notice which is not followed and therefore, it is requested to allow the present special civil application.

#. Heard the learned advocates appearing on behalf of the parties.

#. It is an admitted position that licence of the petitioner to run medical store at Irvin General Hospital, Jamnagar has not been renewed after 1994-95 and the present special civil application is filed in the year 2005 seeking direction directing the respondents to renew the licence i.e. after a period of eleven years. It is also required to be noted that after 1996-97, there is no request by the petitioner to renew the licence and the documentary evidence on record goes to show that after 1997 all through out the petitioners have requested to allot the shop to run the medical store permanently. It is required to be noted that if a shop in question is required to be allotted permanently, applications from public are required to be invited and the same can be done only by way of public auction so that the State Government can fetch maximum amount / revenue and it would also avoid any discriminatory treatment and favourtism. It is also an admitted position that the petitioners are in unauthorised occupation after 1994-95 and in absence of renewal of licence,the petitioners have no right to continue with the possession of the shop in question. The petitioners had also not pointed out any right in their favour to renew the licence. On the basis of the policy decision dated 22.3.2005 and considering the fact that in new Civil Hospital compound at Ahmedabad, the medical store was auctioned by way of public auction which fetched premium of Rs.1.61 crores for a contract of three years and therefoer, it has been decided by the State Government that henceforth considering that all the public premises shall be awarded

by way of public auction so that maximum amount can be fetched and the Government can earn maximum revenue out of the same and considering the aforesaid policy and the aforesaid aspect if the petitioner is directed to hand over vacant and peaceful possession of the shop in question, it cannot be said that there is any illegality committed by the respondents and/or the action of the respondents is arbitrary which requires any interference by this Court while exercising the powers under Article 226 of the Constitution of India.

#. So far as the contention of the petitioners with regard to not following the procedure under the provisions of the Gujarat Public Premises (Eviction of Unauthorised) Occupants Act, 1971 while directing the petitioner to vacate from the shop / premises in question is concerned, it is required to be noted that the petitioners have not challenged the impugned notice dated 24.3.2005 by which the petitioners are directed to vacate from the shop / premises in question. Under the circumstances, in absence of any challenge to the said eviction order, it is not open for the petitioners to contend that the action of the respondents is contrary to the provisions of the Gujarat Public Premises (Eviction of Unauthorised) Occupants Act, 1971. The only prayer of the petitioner is to direct the respondents to renew the licence which has expired in the year 1994-95, cannot be granted in this petition at this such belated stage, nor it would be expedient to interfere with such policy decision of the State Government.

#. For the reasons stated above, there is no substance in the present special civil application and the same is required to be dismissed and is dismissed accordingly.

Rule is discharged with no order as to costs.

Date : 13.5.2005 [M.R.Shah, J.]

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